

GOVERNMENT OF ANDHRA PRADESH

A B S T R A C T

Revision Petitions - Revision Petition filed by Live Stock Development Association, Shantipuram, Visakhapatnam representation by Deputy Director Animal Husbandry Department, Frozen Semen Bull Station, Visakhapatnam, against the orders of Commissioner of Appeals in claim petition No: P1/445/2004, dated 06.05.2004-Remitted back to Commissioner of Appeals, O/o Chief Commissioner of Land Administration, Andhra Pradesh Hyderabad, for re-examination of the case - Orders - Issued.

REVENUE (JA) DEPARTMENT

G.O.Ms.No: 1734

Dt: 20.9.2011

Read the following

1. Proceedings of the Commr.of Appeals claim petition No: P1/445/2004, dated 06.05.2004.
2. Judgment of Hon'ble High Court in W.P.No: 7825 / 2005 dated 26.08.2008.
3. R.P. filed by RP filed by Live Stock Development Association, Shantipuram, VSP rep by Dy. Director Animal Husbandry Department, Frozen Semen Bull Station, Visakhapatnam.
4. Govt. Memo No: 46179/JA2/2008, Dt.01.10.2008, 08.12.08, 30.12.08, 31.01.09, 18.02.09, 25.02.09.
5. Written Arguments filed by respondents No.3, dated 17.01.2009.
6. Written Arguments filed by respondents 4 & 5 Dt. 4.3.09
7. Written Arguments filed by the petitioners Dt.4.3.09.

ORDER:

Whereas the Live Stock Development Association Shantipuram aggrieved by the order of the Commissioner of Appeals in claim petition No: P1/445/2004, Dt. 6.5.2004 filed a Writ Petition in the Hon'ble High Court bearing W.P. No: 7825/2005 and the Hon'ble High Court admitted the Writ Petition and granted status quo orders on 8.4.2005 and subsequently by an order dated 26.8.2008 dismissed the writ petition giving liberty to the petitioners to avail the alternative remedy available to them under Estate Abolition Act, 1948.

Accordingly the petitioners filed the revision petition under rule of AP (Andhra Area) Estates (Abolition and conversion into Ryotwari) Act, 1948 against orders passed by the Commissioner of appeals, office of Chief Commissioner Land Administration in P1/445/2004, Dt. 06.05.2004.

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The facts of the case in brief are as follows:

Sri Neeli Narayana and 3 others of Visakhapatnam have filed a petition U/s 11 (a) of Estate Abolition Act claiming Ryotwari Patta for the lands covered by R.S.No.101/4 with an extent of Acs.2.42 cents and R.S.No.102 Part with an extent of Ac.5.40 cents before the Settlement Officer, Visakhapatnam. The Settlement Officer, Visakhapatnam on examination of the same has rejected the claim in I.A.13/83 as they failed to produce the evidence for delay after lapse of 24 years.

Assailing these orders, they preferred Revision Petition R.P.No: 248/83-B2 before the Director of Settlements, AP., Hyderabad and the same was also rejected. Aggrieved on the order the petitioners filed an Appeal petition before the Commissioner of Appeals, AP., Hyderabad against the orders of the Settlement Officer, Visakhapatnam and Director of Settlements, Andhra Pradesh, Hyderabad.

The Commissioner of Appeals, AP., Hyderabad in its order in P1/445/2004 dated:6.5.2004 after perusing the records and in the light of the documentary evidence furnished has passed orders that the petitioners deserves entitlement for grant of patta in respect of the lands covered by R.S.No.102 Part of Chinagadili Village measuring Ac.5.40 cents only under the provisions of 11 (Pro) of Estate Abolition Act 1948 and therefore allowed the claim of the petitioners for grant of Ryotwari patta in their favour and rejecting the claim of the petitioners in respect of the land covered by R.S.No.101/4 for Ac.2.42 cents and thus the claim was partly allowed.

The District Collector, Visakhapatnam while sending a copy of orders of the Commissioner of Appeals, AP., Hyderabad, the Mandal Revenue Officer, Visakhapatnam has been requested to take further action in the matter. The Mandal Revenue Officer, Visakhapatnam Rural in his letter No.1533/A/dt.4.6.2004 after getting opinion of the Government Pleader, Andhra Pradesh, Hyderabad has reported that there are no grounds for filing of Writ petition challenging the orders of the Commissioner of Appeals and the Dairy form is in the present possession.

The claim of revision petitioners in brief are as under:

The revision petitioner - Deputy Director, Animal Husbandry, Visakhapatnam has submitted that the Government initially acquired Ac.340 of land in Chinagadila (V) for establishing the Dairy form from 1949 - 1963 and the same was under the possession and control of AH Department. By virtue of orders issued in G.O.Ms.No.9, dated 11.02.1998 all the lands including the lands claimed by the Respondents 4-7 were transferred to Visakha Livestock Development Association (Registered under Societies Registration Act in the year 1997) with effect from 30.06.1998. Thus the petitioner is in possession to an extent of Ac.5.40 cents in S.No.102/P of Chinagadila Village, Visakhapatnam since 1968 and the same is being utilized for cultivation of fodder since then. The dairy farm has been in un interrupted possession of the said land ever since. While the matter stood the respondents filed a claim petition before the Commissioner Of Appeals, and the petition was partly allowed in respect of Ac.5.40 cents of land in RS No.102/P and rejected the claim were an extent of Ac.2.42 cents in R.S. No.101/4. The allottees (Respondents) have approached the Collector, Visakhapatnam for handing over of possession of the land. The MRO has reported to the Collector that the land is vacant but is in the possession of petitioners association. They have also submitted a representation to the petitioners association on 31.01.2005. Against the above orders of Commissioner of Appeals, o/o CCLA, Hyderabad, the petitioner (Animal Husbandry Department) have filed revision petition before the Government . Contending it as illegal arbitrary and contrary to the provisions of Estate Abolition Act, 1948.

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The extent of land i.e. Ac.5.40cents is in the possession of Animal Husbandry Department since 1968 and is being cultivated with fodder ever since. There is no record to show that the claimants were in possession either before or after 7.9.1949 as the settlement fair Adangal introduced on 01.07.1959 recorded the land as unoccupied and vacant and therefore an assessed waste(Banjar) land. The Tahsildar Visakhapatnam in his letter 5436/67 dated 26.06.68 recommended the transfer of the vacant Banjar land including the above Ac.5.40cents in Sy. No: 102(Part) to Animal Husbandry Department. The District Collector Visakhapatnam vide letter dated 23.09.68 sanctioned the transfer and was handed over on 14.11.1968.

A land grab case No: LGC 14/88 was filed against the first petitioner in the Special Court at Hyderabad. It was disposed off in favour of Animal Husbandry Department on 20.09.89.

In none of the cases of suits in W.P. No: 13509/87 or O.S.No: 2295 the claimants pleaded that their father Dharmaiah was a Ryot under land holder inducted into the land in the year 1947. There was no whisper about the several documents now cropped up before the Commissioner of Appeals or in the O.S.22/95 which throws a doubt about their bonafides. It is necessary to examine the claim petition filed in 2004 and the various receipts enclosed to it to know the bonafides of the documents. The Mandal Revenue Officer is proper authority to verify the bonafide of the receipts. The claimants have not mentioned about the fact that land in Sy.No: 102 was transferred and has been in possession of the Animal Husbandry Department who is in possession of the land was not even added as a party.

The claimants who applies for a patta under section 11 (pro) must prove that the land holder has admitted him into possession after 1.7.1945 and no petition to condone the delay under section 5 of limitation act was filed in the case.

Though M.R.O. in his letter dated 4.6.2004 addressed to the District Collector reported that the land is in possession to the Animal Husbandry Department, It is stated by the Spl. Government Pleader that the land has been in continuous possession and enjoyment of the claimants.

In view of the foregoing the revision petitioners submitted that the order passed by the Commissioner of appeals is illegal arbitrary contrary to the provisions of E.A.Act,1948 and the present R.P. is filed for the following among other GROUNDS.

- 1) The order of the Learned Commissioner is arbitrary and against the provisions of the E. A. Act.
- 2) The respondents failed to prove that they are the legal heirs of late Sri Neeli Dharmaiah. That the Commissioner has allowed the appeal on the presumptions that the claims of Respondents falls under Sec. 11 (PRO) of the Estates Abolition Act,1948, when no such application was filed by them.
- 3) The authorities failed to appreciate to the facts that the Government of Andhra Pradesh acquired the lands under E.A. Act, and handed over the scheduled lands by proceedings dated 23.09.68 and since then the petitioners is in possession of the said lands.

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- 4) The documents that were pressed before the Commissioner of Appeals for not produced before either the settlement officer or before the Appellate authority and for the first time they were produced before the Commissioner of Appeals and the petitioner who has been admittedly in possession of the property has not been impleaded as a party.
- 5) That the other grounds will be urged at the time of hearing.

During the course of hearing, the respondents filed written arguments which are briefly as under:

- The respondents in their written arguments have stated that the order passed by the Commissioner of Appeals in P1/445/2004, dated 6.5.2004 under Section 11(proviso) of the A.P. (A.A.) is strictly in accordance with the statutory provisions and well within the jurisdiction of the suit property. Their case falls under sec.11 (Pro) of EA Act, 1948 and the COA has passed a well reasoned and considered order which is a ryoti land. The allegation that the land in question i.e., 'Banjar' is totally false and the records would indicate that the land is cultivable dry land and they had been paying the land revenues.
- The COA after verifying the records came to the conclusion that the land in RS No.102 correspondence to OS No.88 and That the land is classified as dry land and that they are paying land revenue and the claimants' father had been lawfully inducted into possession of the land by the Estate Authorities in the year 1947 and the land is under their continuous possession and enjoyment.
- They have submitted that the petitioners Association has no legal right or local stand to challenge the grant of ryotwari patta under sec.11 (Pro) based on the land allotted to Animal Husbandry Department under BSO 22 (para 8) in 1968 by the Joint Collector. That the acquisition/ allotment of the land to AH Dept., during the year 1968 by the Joint Collector, Visakhapatnam itself is in violation of rules and the Joint Collector had no jurisdiction to allot the land to the Animal Husbandry Department since it is not a Government land covered by B.S.O.22, whereas, it is ryoti land, covered by the provisions of the A.P.(A.A.) Estates(Abolition and Conversion into Ryotwari) Act,1948.
- The original allottee, i.e., Animal Husbandry Department has not filed the revision petition, whereas an Association has done so. Hence the R.P. cannot be maintained.
- That AH Dept., is not a party to the Revision Petition and an association cannot take the place of a Govt. Dept., and it cannot challenge the grant of Ryotwari Patta.
- A revision petition can not be maintained without sanction of the Government which is a blatant breach of para (2) of B.S.O.94. i.e., one department of Government may not institute legal proceedings against another department.
- The claim of the revision petitioner which is an association cannot supercede, overrule, bypass or stand down on a superior footing than the rights of the claimants under Section 11(Proviso) of the E.A. 1948.

Contd.,

- The claim of the revision petitioner which is solely based on the alleged allotment which was made under B.S.O.22 para 8 in favour of another Government Department, cannot by any application of law or logic prevail over or take away the statutory rights conferred on the claimants by virtue of Section 11(proviso) of EA Act, 1948.
- Inam is a grant and ryotwari patta is a re-grant. Regrant has to be done depending upon the nature of occupation of ryoti land under the EA Act, 1948. When the statute itself confers right on the claimants for grant of ryotwari patta and any allotment made under the B.S.O. during the interregnum would not be taking away such statutory rights and such allotment made irregularly under B.S.O. has to be necessarily subject matter under the Special Act i.e., Estate Abolition Act, 1948.
- They contend that the proceedings initiated by the claimants u/s.11 (a) of EA Act, 1948 are irrelevant and it would not mean that their statutory rights conferred under sec.11 (Pro) would be simply be washed away. They can always invoke the correct provision of law by approaching the statutory authority. Provisions of the Special Act i.e., Section 11(proviso) of EA Act, 1948 would prevail over any decision taken either by the Special Court while deciding Land Grabbing Case or any decision of any other forum. All the references made to the L.G.C. and civil proceedings are totally out of context and have absolute no bearing on the statutory adjudication for grant of ryotwari patta under the Special Act.

Thus the revision petitioner has not been able to make out any case except for making vague arguments and made uncalled for comments against Commissioner of Appeals, Government Pleader and MRO for which disciplinary action should be initiated against the Errant official.

Further the Tahsildar, Visakhapatnam has filed his contentions as under:

The Revenue authorities / Dist. Collector submitted that there has been well planned attempt by the respondents 4 to 7 to grab the Govt. land by creating fictitious documents. The land in question has been in possession and enjoyment of the AH Department and The respondents were never in possession and occupation of the land in Sy.No.102 at any point of time. The Revision petition filed by the Deputy Director, Animal Husbandry Dept. may be allowed as they are in continuous possession for the last 50 yrs.

The notices were given to all parties and personally hearing was also given to them at various times and finally heard on 29.07.2011. Both the parties filed their written arguments, perused the lower court records. It is observed that the claim of the respondent was rejected by the settlement Officer, Visakhapatnam on failure to produce evidence for delay after 24 years. The Director Settlement, Hyderabad had rejected the appeal filed by the respondent.

The appellant at the Government level, Deputy Director Animal Husbandry, Visakhapatnam has submitted a number ground and claimed that the land belongs to their department.

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It is noticed that at the appeal stage before the commissioner of Appeals O/o Chief Commissioner of Land Administration, Hyderabad, Deputy Director Animal Husbandry Department was not a party to the appeal and did not get the opportunity to put up their defense, as MRO/Revenue Department was the sole respondent.

Therefore, it is felt that a reasonable opportunity should be provided to Deputy Director, Animal Husbandry Department, Visakhapatnam, the revision petitioner in this case to put forth their arguments and claims with necessary evidence. Hence, it will be appropriate and in the interest of justice if the case is remanded back to the Commissioner of Appeal, O/o Chief Commissioner of Land Administration Hyderabad for hearing the case with Deputy Director Animal Husbandry Department, Visakhapatnam as one of the parties.

In view of the above, Government after careful examination of matter, hereby remand the case to the Commissioner of Appeal to conduct the hearing again after issuing notices to all parties and pass appropriate orders.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRDESH)

**ANIL CHANDRA PUNEETHA
PRINCIPAL SECRETARY TO GOVERNMENT**